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100TH CONGRESS
2d Session

SENATE

REPORT
100-408

NATIONAL TRAILS SYSTEM IMPROVEMENTS ACT OF 1988

JUNE 29, 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1544]

The Committee on Energy and Natural Resources to which was referred the bill (S. 1544) to amend the National Trails System Act to provide for cooperation with State and local governments for the improved management of certain Federal lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Trails System Improvements Act of 1988".

SEC. 2. FINDINGS.

Congress hereby finds that—

(1) State and local governments have a special role to play under the National Trails System Act in acquiring and developing trails for recreation and conservation purposes.

(2) Many miles of public land rights-of-way have been granted to the railroads by the United States, and much of this mileage could be suitable for trail use at such time as it may be abandoned.

(3) The United States should retain any residual interest it may have in such public land rights-of-way and relinquish it, where appropriate, in favor of State and local governments or other nonprofit entities for trail purposes.

SEC. 3. NATIONAL TRAILS SYSTEM ACT AMENDMENTS.

Section 9 of the National Trails System Act (16 U.S.C. 1248) is amended by adding the following new subsections after subsection (b):

"(c) Commencing upon the date of enactment of this subsection, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in the Act of March 8, 1922 (43 U.S.C. 912), shall remain in the United States upon the abandonment or forfeiture of such rights-of-way, or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced

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within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such Act.

"(d)(1) All rights-of-way, or portions thereof, retained by the United States pursuant to subsection (c) which are located within the boundaries of a conservation system unit or a National Forest shall be added to and incorporated within such unit or National Forest and managed in accordance with applicable provisions of law, including this Act.

"(2) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or a National Forest but adjacent to or contiguous with any portion of the public lands shall be managed pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this section.

"(3) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or National Forest which the Secretary of the Interior determines suitable for use as a public recreational trail or other recreational purposes shall be managed by the Secretary for such uses, as well as for such other uses as the Secretary determines to be appropriate pursuant to applicable laws.

"(e)(1) The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title, and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c), if such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior determines to be legally and financially qualified to manage the relevant portion for public recreational purposes. Upon receipt of such an application, the Secretary shall publish a notice concerning such application in a newspaper of general circulation in the area where the relevant portion is located. Such release and quitclaim shall be on the following conditions:

"(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then any and all right, title, and interest released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

"(B) Such unit or entity shall assume full responsibility for any and all legal liability which might arise with respect to such right-of-way.

"(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quit-claim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

"(2) The Secretary is authorized to sell any portion of a right-of-way retained by the United States pursuant to subsection (c) located outside the boundaries of a conservation system unit or National Forest if any such portion is—

"(A) not adjacent to or contiguous with any portion of the public lands; or

"(B) determined by the Secretary, pursuant to the disposal criteria established by section 203 of the Federal Land Policy and Management Act of 1976, to be suitable for sale.

Prior to conducting any such sale, the Secretary shall take appropriate steps to afford a unit of State or local government or any other entity an opportunity to seek to obtain such portion pursuant to paragraph (1) of this subsection.

"(3) All proceeds from sales of such retained rights of way shall be deposited into the Treasury of the United States and credited to the Land and Water Conservation Fund as provided in section 2 of the Land and Water Conservation Fund Act of 1965.

"(4) The Secretary of the Interior shall annually report to the Congress the total proceeds from sales under paragraph (2) during the preceding fiscal year. Such report shall be included in the President's annual budget submitted to the Congress.

"(f) As used in this section—

"(1) The term 'conservation system unit' has the same meaning given such term in the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371 et seq), except that such term shall also include units outside Alaska.

"(2) The term 'public lands' has the same meaning given such term in the Federal Land Policy and Management Act of 1976.".

SEC. 4. IDITAROD HISTORIC TRAIL ADVISORY COUNCIL.

Section 5 of the National Trails System Act (16 U.S.C. 1241), as amended, is further amended as follows: In subsection 5(d) after the phrase "each of which councils shall expire ten years from the date of its establishment." insert "establishment, except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment.".

SEC. 5. CONDEMNATION

(a) Nothing in this Act shall be construed as authorizing the Secretary of the Interior to use condemnation proceedings to retain or acquire all or any portion of a right-of-way described in this Act.

(b) Nothing in this Act shall be construed to expand or diminish existing condemnation authorities contained in the National Trails System Act, as amended.

Purpose of the Measure

The purpose of S. 1544, as ordered reported, is to further the use of abandoned railroad rights-of-way for recreational trail and conservation purposes.

Background and Need

In the second half of the 1800's, Congress passed legislation to encourage the expansion of railroads by offering rights-of-way across federal lands. Initially, during the 1860's, these legislative initiatives involved generous grants of rights-of-way and lands to the great transcontinental railroads. In later years, this approach was discarded and replaced by the 1875 General Railroad Right of Way Act, which permitted railroads to obtain a 200-foot federal right-of-way for running track across public lands. It is estimated that approximately one-half of the railroad rights-of-way in the United States were federally granted through one of the various 19th century right-of-way statutes.

Prior to 1922, as railroad rights-of-way were abandoned, numerous individual laws were enacted to determine the disposition of the lands within various rights-of-way. In 1922, Congress adopted legislation (43 U.S.C. 912) to providing that upon an abandonment confirmed by court decree or Act of Congress, the federal interest in the right-of-way would become the property of any adjacent landowner whose own title was based on a federal conveyance or of a municipality through which the right-of-way passed, unless a state or local agency included such a right-of-way in a public highway within one year of abandonment.

In addition, Congress has acted on other occasions to promote other public uses of abandoned railroad rights-of-way. In particular, their use for recreation has been recognized and encouraged by the National Trails System Act, the Railroad Revitalization and Regulatory Reform Act, and other laws. More than 55,000 miles of railroad right-of-way have been abandoned since 1975, and the rate of abandonment has been increasing in recent years.

As interest in walking, biking and hiking continues to grow, and pressure for more and better trails has emerged, abandoned railroads have become a growing source of new recreational trails. They are well suited to trail use since they often follow river corridors, traverse coastal plains, cross mountain valleys, and link neighboring towns and valleys. Because the rail lines are already established, constructing a trail from an abandoned railroad is much less costly than building an entirely new trail.

S. 1544 would facilitate such trail development and use by allowing the United States to retain its interest in abandoned rights-of-way and encouraging trail development on these rights-of-way.

Legislative History

A hearing on S. 1544 was conducted by the Subcommittee on Public Lands, National Parks and Forests on March 3, 1988. The House companion bill, H.R. 2461, passed the House on April 19, 1988.

At the business meeting on May 18, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1544, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on May 18, 1988 by unanimous vote of a quorum present, recommends that the Senate pass S. 1544 if amended, as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers*	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

*Indicates voted by proxy.

Committee Amendments

During the consideration of S. 1544, the Committee adopted an amendment in the nature of a substitute, which makes the bill very similar to the House companion, H.R. 2641. The substitute includes a number of technical and conforming amendments and some substantive changes. A discussion of those substantive differences follows. Additional information on the substitute is included in the "Section-by-Section Analysis" of this report.

Consideration of other Multiple Uses in addition to Trail Use

The Committee added language to broaden the management options of rights-of-way retained by the United States outside the boundaries of a conservation unit or National Forest. The bill, as introduced, directed the Secretary of the Interior to manage those rights-of-way that he deemed suitable as a public recreational trail or for other recreational purposes. The Committee added language to direct the Secretary to expand the management of such rights-of-way to include other uses that the Secretary determines to be appropriate pursuant to applicable law. Other multiple uses such as roads or utility rights-of-ways may therefore be considered along with the trail or recreational uses.

Conveyance of Retained Rights-of-Way

The Committee is concerned that the conveyance of reverted rights-of-way which would be authorized by S. 1544 occur only in appropriate circumstances. The Committee therefore added language to allow the Secretary to release and quitclaim retained rights-of-way only "where appropriate". These rights-of-way may have continuing multiple use values, (e.g. utility corridors), which should be fully examined before the right-of-way is conveyed out of federal ownership. In this regard, the Committee notes that one of the tests for transferring land out of Federal ownership by sale contained in section 203(a)(3) of FLPMA is that "disposal of such tract will serve important public objectives, . . . which cannot be achieved prudently or feasibly on other than public land *and which outweigh other public objectives and values. . . .*" (Emphasis added). The Committee believes this standard should be used by the Secretary in determining when it is appropriate to transfer rights-of-way by release and quitclaim pursuant to this section.

Liability

The Committee understands that the Department of the Interior is concerned that it might be held liable for hazardous conditions or materials which might be found on rights-of-way transferred pursuant to S. 1544. The Committee added language to clarify that any unit of government or other entity receiving title to the surface estate of a right-of-way through release and quitclaim by the Secretary must assume full responsibility for any legal liability which might arise as a result of activities on or conditions of the right-of-way both prior to and after the transfer. The railroad or third parties will, of course, remain liable for their own acts and omissions on the corridor. The Committee expects the Secretary to appropriately condition the release and quitclaim to reflect the Committee's intent in this regard.

The Committee also added language clarifying that, notwithstanding any other provision of law, the United States would be under no duty or obligation to inspect such right-of-way prior to release and quitclaim and would incur no liability with respect to hazardous or unsafe conditions existing at the time of the release or quitclaim.

Trails Fund

The bill, as introduced, provided for sale of federal rights-of-way which are not appropriate for trails use, with the proceeds being credited to a special revolving fund to finance trail acquisition and development. The Committee has amended the bill to provide that the proceeds from such sales be credited instead to the Land and Water Conservation Fund to be used in accordance with the Land and Water Conservation Fund Act of 1965.

Iditarod Historic Trail Advisory Council

The Committee added an additional section to the bill which would extend the Iditarod Historic Trail Advisory Council from ten to twenty years.

Condemnation Authority

The Committee also added a new section to S. 1544 ensuring that this bill will not grant the Secretary the authority to condemn lands for the purpose of retaining or acquiring any or all of a right-of-way.

The Committee also included a savings clause providing that nothing in the bill would be construed to expand or diminish existing condemnation authorities contained in the National Trails System Act, as amended.

Section-by-Section Analysis

Section 1 provides that this Act may be cited as the "National Trails System Improvements Act of 1988".

Section 2 contains findings of the Congress with respect to the public policy on the use of abandoned railroad rights-of-way for trail purposes.

Section 3 amends section 9 of the National Trails System Act by adding four new subsections.

The first new subsection, subsection (c), provides that in the event of future abandonments of railroad rights-of-way previously granted by the United States, the United States would retain whatever interest it may have in the abandoned railroad right-of-way.

The second new subsection, subsection (d), would provide for management of the retained federal interests in the affected rights-of-way. Paragraph (1) directs that rights-of-way retained by the United States inside a conservation area or National Forest be managed in accordance with applicable provisions of law relating to those lands.

Paragraph (2) of new subsection (d) provides that retained rights-of-way adjacent to or contiguous with any portion of the public lands would be managed in accordance with the Federal Land Policy and Management Act of 1976 and other applicable provisions of law.

Paragraph (3) of new subsection (d) would provide that portions of retained rights-of-way located outside the boundaries of a conservation system unit or National Forest, and suitable for recreational trail and other public recreation purposes, would be managed for such purposes as well as other uses the Secretary determines to be appropriate pursuant to applicable law.

New subsection (4), paragraph (1), would authorize the Secretary of the Interior, where appropriate, to transfer to a State or local government or qualified entity, for public recreational purposes, the retained federal interests in an abandoned right-of-way located outside the boundaries of a conservation system unit or National Forest. The Secretary would be required to publish a public notice when an application for transfer is made by a State of local government or qualified entity. The paragraph would also specify that such transfers would be subject to these conditions: (1) a transferred right-of-way would revert to the United States if the recipient attempted to convey or transfer it or if it were used for purposes incompatible with public recreation; (2) such unit or entity shall assume full responsibility for any and all legal liability which might arise with respect to such right-of-way; (3) notwithstanding any other provision of law, the United States would be under no duty or obligation to inspect such right-of-way before transfer and would not incur any legal liability with respect to any hazard or unsafe condition existing on such right-of-way prior to transfer.

Paragraph (2) of new subsection (e) would authorize the Secretary of the Interior to dispose of rights-of-way outside of a conservation system unit or National Forest and not adjacent to or contiguous with any portion of the public lands. Prior to such sale, the Secretary would be required to make a determination pursuant to section 203 of the Federal Land Policy and Management Act of 1976 as to the suitability for sale, and would also be required to provide appropriate opportunities for a State, unit of local government or qualified entity to seek to obtain the right-of-way for public recreation purposes through the mechanism provided by paragraph (1), and in accordance with its requirements.

The proceeds from such sales would be deposited in the Land and Water Conservation Fund (LWCF) as provided for in section 2 of the LWCF Act of 1965. The Secretary would be required to make a yearly report to the Congress as to the proceeds realized from such sales.

New subsection (f) would define relevant terms used in S. 1544.

Section 4 amends Section 5 of the National Trails System Act to extend the life of the Iditarod Historic Trail Advisory Council from ten to twenty years from the date of its establishment.

Section 5 ensures that nothing in the bill should be construed to authorize the Secretary to use condemnation to retain or acquire all or any portion of a right-of-way described in the bill. A savings clause clarifies that nothing in this bill should be construed to expand or diminish existing condemnation authority contained in the National Trails System Act, as amended.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1544. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1544, as reported.

Executive Communications

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations and testimony received by the Department of the Interior during Subcommittee hearings relating to S. 1544 are set forth below:

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 2 2 1988

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your request for the views of this Department regarding S. 1544, a bill "To amend the National Trails System Act to provide for cooperation with State and local governments for the improved management of certain Federal lands, and for other purposes."

The Department of Agriculture recommends enactment of S. 1544 only if amended to resolve several issues discussed herein. We defer to the Department of the Interior regarding those portions of the bill affecting that Department.

S. 1544 would amend section 9 of the National Trails System Act ("Trails Act") by adding several new subsections. Enactment of S. 1544 would require that any right, title, interest, and estate of the United States in all rights-of-way of the type described in the Act of March 8, 1922, would remain in the United States upon the abandonment or forfeiture of such rights-of-way. An exception would be made for those rights-of-way included within a public highway within 1 year after abandonment.

Abandoned rights-of-way retained by the United States within the boundaries of a National Forest or a conservation unit would be added to that Forest or unit and managed accordingly. All such rights-of-way outside the boundaries of a conservation unit or a National Forest, but adjacent to or contiguous with any public lands, would be managed by the Secretary of the Interior pursuant to the Federal Land Policy and Management Act of 1976. Under certain conditions, the Secretary of the Interior would be authorized to transfer such lands to a unit of State or local government or to sell any portion of the retained rights-of-way.

S. 1544 would establish a revolving trails development fund, to be known as the Trails Fund. The fund would consist of appropriations made by Congress, funds from the sale of any retained railway rights-of-way, donations, and interest on the fund. The fund would be managed by the Secretary of the Interior for acquisition of new trails or construction or reconstruction of existing trails. The Secretary of the Interior would be authorized to make loans from the fund to qualifying organizations and governmental units for trail purposes.

We strongly support the concept of converting abandoned railroad rights-of-way to trails where such adaptive use is appropriate. However, we believe S. 1544 would probably do more to confuse land titles than to expand the national network of trails.

This bill pertains to residual property rights of the United States. Enactment could affect thousands of rights-of-way conveyances made under a variety of statutory authorities and require complicated interpretations of public land law pertaining to residual rights of the United States.

Section 3 assumes that the United States has some remaining residual interest in certain railway rights-of-way which could be converted to recreation trail uses. That may or may not be the case.

Upon abandonment, rights-of-way across National Forest System lands that were granted under the Act of March 3, 1875 (43 U.S.C. 934), generally vest to the United States upon abandonment. Rights-of-way granted under other authorities must be individually examined to determine the status of the rights-of-way if the railway is abandoned.

In our experience and from review of selected railroad grants affecting National Forests, it appears that the United States has residual property interests in few, if any, rights-of-way over private land within National Forest boundaries. Under current law (43 U.S.C. 912), if the United States has some residual property rights in abandoned rights-of-way over private land, those rights would pass to the owner of the underlying land, subject to certain State rights to use the rights-of-way for roads.

The proposed bill would implicitly repeal 43 U.S.C. 912, thereby reversing the public policy set in 1922 with regard to abandoned rights-of-way. It is unclear what effect this would have on rights already vested under section 912. It is also unclear what the effects would be on land titles affected by rights-of-way. Section 912 was enacted, in part, to provide a cost effective and expeditious means of clearing title to patented land. If the process for dealing with abandoned rights-of-way is to be changed, it ought to be done by direct amendment of section 912 with full consideration of the impacts on land titles and the potential taking issues.

S. 1544 is inconsistent with the provisions of most State laws which provide that rights in an abandoned easement merge with the underlying fee title. Adjacent property owners have an expectation of being the successors to the rights in abandoned rights-of-way. When dealing with potential clouds on private land titles, we see a compelling reason to be as consistent as possible with State property laws. This bill does not do that. We are concerned that enactment of this bill will complicate land titles by interposing the Federal Government in chains of title to land long ago patented from the public domain. This will inevitably lead to litigation.

We do not support the creation of a Trails Fund. This fund would probably cost more to administer than any benefits it would generate.

We again would like to emphasize that we support the concept of "rails to trails." However, the concerns we have raised must be appropriately addressed in any bill that we would support. We would be pleased to work with the Committee to develop a mutually acceptable bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Richard E. Lyng

RICHARD E. LYNG
Secretary

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1544, THE PROPOSED NATIONAL TRAILS SYSTEM IMPROVEMENTS ACT OF 1987.

MARCH 3, 1988

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on S. 1544, the proposed National Trails System Improvements Act of 1987.

We support the intent of the bill, to encourage State and local governments to acquire and develop trails for recreation and conservation purposes, but we cannot recommend enactment of the bill in its present form. It would be premature for us to support such a measure without a comprehensive understanding of all the legal issues involved, and there are many which would be unresolved under S. 1544. Moreover, we do not agree with the findings of the bill outlining a strong Federal role in providing funding.

S. 1544 would amend the National Trails System Act by adding four subsections to section 9. These provisions deal with abandoned or forfeited railroad rights-of-way. Under existing law, if it reverts to the U.S., an abandoned or forfeited right-of-way is conveyed to the owner of the land traversed by the right-of-way or to a city if the right-of-way is within a municipality. Under S. 1544, whatever right-of-way interest that may revert to the U.S. would remain in the Federal Government to be managed or disposed of as follows:

-- If the right-of-way is within the National Park System, National Wildlife Refuge System, National Trails System, National Forest System, or Wild and Scenic Rivers System, it becomes part of that system and is managed accordingly.

-- If the right-of-way is not within one of the conservation systems but is nevertheless adjacent to public lands managed by the Bureau of Land Management, then it shall be managed by BLM in accordance with FLPMA.

-- If the right-of-way is outside of a conservation system unit, it could be transferred to qualified non-Federal entities for recreational purposes, or, if not adjacent to BLM lands, sold with the proceeds deposited into a new fund in the Treasury, the Trails Fund.

We note that other federally-managed areas such as Bureau of Reclamation withdrawals, military reservations, and Indian lands held in trust by the United States are not covered by the legislation.

Section 4 of the bill would establish the Trails Fund, to consist of initial appropriations of $500,000 in fiscal years 1988 and 1989, together with proceeds from right-of-way sales, donations, and interest. The fund would be available, without appropriation, for acquisition and construction of trails and for loans to states, local governments, and qualified private organizations. The loans may be interest-free.

The bill further requires an annual report to the legislative Committees of Congress, and it authorizes appropriations totalling $1 million over 2 years for the Trails Fund.

Mr. Chairman, we believe that trails and trail-related activities represent excellent outdoor recreation opportunities for America's citizens. Accordingly, we support the initial finding of the bill related to encouraging State and local governments to establish additional trail opportunities, as well as the intent of the provision of the bill that would effectively repeal 43 U.S.C. 912. Apparently, the intent of this last provision is to

ensure that any Federal interests in abandoned railroad rights-of-way would remain in Federal ownership unless and until a conscious decision is made to transfer or sell such interests for recreational use. We estimate that approximately 30,000 miles of public land rights-of-way were granted to the railroads in the 1800's, and we share the belief of the bill's sponsors that much of this mileage could be converted to trail use at such time as it may be abandoned.

There are, however, several problems with the bill that make it seriously flawed.

We have no specific data, for example, on what rights-of-way might become available or even how much has been abandoned. We believe that further analyses and surveys would determine the dimension of the opportunities or liabilities such rights-of-way represent. Such surveys should be required before we can undertake to support S. 1544, and they would require close coordination with other Federal interests, State and local governments, and private property owners, including the railroads themselves. We would also encourage private groups to assemble data on candidate areas.

In addition, and more seriously, there are several outstanding legal issues related to the proposed assertion by the Federal Government to reclaim title to some of these rights-of-way. Although we are certainly willing to release whatever interest the Federal Government may have, if any, in the surface rights to such property for the purposes envisioned by S. 1544, it is unclear what these rights may be. Our Departmental Solicitor's office has been studying this question, and the results appear to be mixed.

In some jurisdictions, the right-of-way has been construed as creating a type of limited fee title for the property owner, thus

leaving some interest in the original grantor (the Federal Government), and adjacent property owners could not expect that they would have ownership rights to the abandoned right-of-way. In other jurisdictions, however, it has been determined that the right-of-way is simply an easement over land owned by the underlying property owner. In these cases, the Federal Government retains no right to assert title to the property unless it is on Federal land. The right-of-way would no longer exist, and the underlying property owner would no longer carry this burden on his property. Therefore, upon abandonment, such property would normally revert to that property owner. Many adjacent property owners evidently have past assurances from the Federal Government that the right-of-way is just an easement, and the property belongs to them. The 1922 Act is vague in this regard.

If S. 1544 were enacted, we are concerned, therefore, that the Federal Government could be placed in the position of asserting title to that which it no longer owns, thus creating an issue of a potential taking by the Federal Government of private property. We see the possibility of numerous law suits over this very matter, and that is one reason we believe these determinations are best left to State and local governments to resolve. Moreover, we believe that the State and local governments would be in a far better position than we are to negotiate for such recreational use.

We therefore recommend that section 3 of the bill be drawn to amend the Act of May 8, 1922, 43 U.S.C. 912, rather than section 9 of the National Trails System Act. Also, by separate letter, we would like to offer several other technical amendments to the bill, especially section 3, to address the problems that were raised during our review of the measure. We question, for example, the need for additional authority to transfer or sell any Federal property interests that may exist.

We believe that Congress should also consider the liability issue, not treated in S. 1544, if Federal rights-of-way are conveyed to a state or other entity subject to a reversionary clause. Under section 8(d) of the Trails Act, which deals with interim use of rights-of-way for trails, the transferee must assume all tort liability. A similar provision should be considered for transfer of Federal interests. Consideration could also be given to requiring a railroad to remove hazards, including toxic wastes, following a decision to abandon. This would also provide assurance that hazardous products and materials would not automatically be included in a federally-managed area, with consequent financial exposure, under the terms of the bill.

Finally, Mr. Chairman, we oppose a new Federal loan program which would require increased appropriations and would earmark receipts from Federal property sales to the new Trails Fund to be created under the bill. This would undercut the ability of the Congress and the Administration to make rational resource allocations from the amounts available to them. Moreover, this would disconnect the need for funding state and local trail programs, an activity which is not a Federal responsibility, from the level of funding provided. We also note that the previously cited question of ownership could also call into question a source of Trail Fund monies, since the Federal Government cannot sell that which it does not own.

In summary, Mr. Chairman, we have tried to find a way to support this bill because we strongly believe in its goals, but without a resolution of these underlying legal questions and as long as the proposal for Federal funding remains, we cannot support S. 1544.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1544, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL TRAILS SYSTEM ACT

An act to establish a national trails system, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Trails System Act".

* * * * * * *

NATIONAL SCENIC AND NATIONAL HISTORICAL TRAILS

SEC. 5. (a) * * *

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(d) The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national trail to the system, and within sixty days of the enactment of this sentence for the Appalachian and Pacific Crest National Scenic Trail, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its [establishment.] *establishment, except that the Advisory Council established for Iditarod Historic Trail shall expire twenty years from the date of its establishment.* If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

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RIGHTS-OF-WAY AND OTHER PROPERTIES

Sec. 9. (a) The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way

upon, over, under, across, or along any component of the national trails system in accordance with laws applicable to the national park system and the national forest system, respectively: *Provided,* That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this Act.

(b) The Department of Defense, the Department of Transportation, the Interstate Commerce Commission, the Federal Communications Commission, the Federal Power Commission, and other Federal agencies have jurisdiction or control over or information concerning the use, abandonment, or disposition of road ways utility rights-of-way properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use.

(c) Commencing upon the date of enactment of this subsection, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in the Act of March 8, 1922 (43 U.S.C. 912), shall remain in the United States upon the abandonment or forfeiture of such rights-of-way or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such Act.

(d)(1) All rights-of-way, or portions thereof, retained by the United States pursuant to subsection (c) which are located within the boundaries of a conservation system unit or a National Forest shall be added to and incorporated within such unit or National Forest and managed in accordance with applicable provisions of law, including this Act.

(2) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or a National Forest but adjacent to or contiguous with any portion of the public lands shall be managed pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this section.

(3) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or National Forest which the Secretary of the Interior determines suitable for use as a public recreational trail or other recreational purposes shall be managed by the Secretary for such uses, as well as for such other uses as the Secretary determines to be appropriate pursuant to applicable laws.

(e)(1) The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title, and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c) if such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior deter-

mines to be legally and financially qualified to manage the relevant portion for public recreational purposes. Upon receipt of such an application, the Secretary shall publish a notice concerning such application in a newspaper of general circulation in the area where the relevant portion is located. Such release and quitclaim shall be on the following conditions:

(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then any and all right, title, and interest released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

(B) Such unit or entity shall assume full responsibility for any and all legal liability which might arise with respect to such right-of-way.

(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

(2) The Secretary is authorized to sell any portion of a right-of-way retained by the United States pursuant to subsection (c) located outside the boundaries of a conservation system unit or National Forest if any such portion is—

(A) not adjacent to our contiguous with any portion of the public lands; or

(B) determined by the Secretary, pursuant to the disposal criteria established by section 203 of the Federal Land Policy and Management Act of 1976, to be suitable for sale.

Prior to conducting any such sale, the Secretary shall take appropriate steps to afford a unit of State or local government or any other entity an opportunity to seek to obtain such portion pursuant to paragraph (1) of this subsection.

(3) All proceeds from sales of such retained rights of way shall be deposited into the Treasury of the United States and credited to the Land and Water Conservation Fund as provided in section 2 of the Land and Water Conservation Fund Act of 1965.

(4) The Secretary of the Interior shall annually report to the Congress the total proceeds from sales under paragraph (2) during the preceding fiscal year. Such report shall be included in the President's annual budget submitted to the Congress.

(f) As used in this section—

(1) The term "conservation system unit" has the same meaning given such terms in the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371 et seq.), except that such term shall also include units outside Alaska.

(2) The term "public lands" has the same meaning given such term in the Federal Land Policy and Management Act of 1976.

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